

## 1 MEMORANDUM OF POINTS AND AUTHORITIES

## 2 THE LAW FOR SUMMARY JUDGMENT

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4 Summary judgment is appropriate when it is determined  
 5 that there exist no genuine issue as to any material fact,  
 6 and that the moving party is entitled to judgment as a matter  
 7 of law. Federal Rules of Civil Procedure, Rule 56(c); Adickes  
 8 v. S.H. Kress & Co., 396 U.S. 144, 157 (1970); Poller v.  
 9 Columbia Broadcast System, 368 U.S. 464, 467 (1962).

10 Under summary judgment practice, the moving party [Always]  
 11 bears the initial responsibility of informing the district  
 12 court of the basis for its motion, and identifying those  
 13 portions of "the pleadings, depositions, answers to  
 interrogatories and admissions on file together with  
 affidavits, if any, "which it believes demonstrate the  
 absence of a genuine issue of material fact.

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15 Colotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

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17 [W]here the non-moving party will bear the burden of proof  
 18 at trial on a dispositive issue, a summary judgment motion  
 19 may properly be made in reliance solely on the pleadings,  
 depositions, answers to interrogatories, and admissions  
 on file.

20 *Id.*

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22 Indeed, summary judgment should be entered, after adequate  
 23 time for discovery and upon motion, against a party who fails

24 to make a showing sufficient to establish the existence of  
 25 an element essential to the party's case, and on which that  
 26 party will bear burden of proof at trial. *Id.*, at 322. "A  
 27 complete failure of proof concerning an essential element of  
 28 the non-moving party's case necessarily renders all other facts

1 immaterial." Id. In such circumstances, summary judgment should  
 2 be granted, "so long as whatever is before the district court  
 3 demonstrates that the standard for entry of summary judgment,  
 4 as set forth in Rule 56(c) is satisfied." Id., at 323.

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6 If the moving party meets its initial responsibility,  
 7 the burden then shifts to the opposing party to establish that  
 8 a genuine issue as to any material fact does exist. Matsushita  
 9 Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586  
 10 (1986).

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12 In attempting to establish the existence of this factual  
 13 dispute, the opposing party may not rely upon the denials of  
 14 its pleadings, but is required to tender evidence of specific  
 15 facts in the form of affidavits, and/or admissible discovery  
 16 material, in support of its contention that the dispute exist.  
 17 Rule 56(e); Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,  
 18 475 U.S. at 586 n.11. The opposing party must demonstrate that  
 19 the fact in contention is material, i.e., a fact that might  
 20 affect the outcome of the suit under the governing law. Anderson  
 21 v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986); T.W. Elec.  
 22 Serv. Inc. v. Pacific Elec. Contractors Ass'n., 809 F.2d 626,  
 23 630 (9th Cir 1987) and that the dispute is genuine, i.e. the  
 24 evidence is such that a reasonable jury could return a verdict  
 25 for the non-moving party. Anderson v. Liberty Lobby Inc., 477  
 26 U.S. at 248-249; Wool v. Tandem Computers Inc., 818 F.2d 1433,  
 27 1436 (9th Cir 1987).

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## THE LAND.

1 King v. Atireh, 814 F.2d 565, 567. (7th Cir. Their obligation  
2 is to - in responding to a summary-judgement motion  
3 They must "set out specific facts in declaration,  
4 deposition, answer to interrogatories or authenticated  
5 documents. . . That. . . Show that there is a genuine of  
6 material fact for trial." Rand 154, F.3d, p 963 (emp. add.).  
7  
8 (ARGUMENT)

8 Law.

9 THE supreme Court, has held that "under the test  
10 we adopt to day, an Eighth Amendment Claim need  
11 not show that a prison official acted or failed to  
12 act believing that harm actually would befall an  
13 inmate'; it is enough that the official acted or fail to  
14 act despite his knowledge of a substantial risk of  
15 serious harm ( FARMER V. BRENNAN, 511 U.S. 825, 128  
16 1 ED. 2d 811, 114 S.C.T. 1970 (1994))

17 "PLAINTIFF OPPOSING SUMMARY  
18 Judgment Motion"

19 THIS Motion is based and made on the facts, evidence  
20 Declaration, Exhibits, and Laws that govern opposing  
21 Summary judgment, pursuant to F.R.C.P. #56.  
22 under a motion for summary judgment, the party opposing  
23 the Motion<sup>1</sup> "Adickes v. S.H. Kress & Co., 398 U.S. 144, 157-76  
24 (1970) Curry v. Scott 249 F.3d 493, 505 (6th Cir. 2001)

## 25 ARGUMENT

II

27 Plaintiff's motion should be granted  
28 because defendants ~~should~~ failed  
11 to protect him and due to defendants  
violated his rights.

under Rule 56, opposing a motion for summary judgment  
The plaintiff must properly

1 submit, supporting documents, such as declarations  
2 (or others sworn testimony), and must rely on specific  
3 facts in declarations, depositions, answers to  
4 Complaints, interrogatories, or authenticated documents,  
5 as provided in Rule 56 (c)<sup>1</sup>. That contradict the  
6 facts shown in the defendants' declarations and  
7 documents and show that there is a genuine issue  
8 of material fact for trial.

9 Herin this Motion Plaintiff is presenting  
10 evidence that contradict the facts shown by Def's  
11 and is opposing their summary judgment.

12 Here plaintiff has clearly stated a cognizable  
13 ground, showing all (3) Defendants failed to intervene  
14 during the May 25, 2021 attack on plaintiff by inmate Brown  
15 which under legal grounds, they all violated Plaintiff's  
16 Eighth Amendment by Deliberate indifference to his  
17 safety.

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22 Plaintiff's opposing Motion should be granted because he  
23 has proved there is undisputed facts and there is  
24 a genuine issue herein this opposing Motion and  
25 1) when the judge considers a motion for summary judgment  
26 they are supposed to view the evidence submitted by both  
27 sides "in the light most favorable to the party opposing  
28 the motion" (Adickes v. S.H. Kress & Co., 398 U.S. 144, 157, 160  
(1960) also (Curry v. Scott))  
2) Plaintiff's FACTS:

2 All three defendants failed to protect plaintiff on 5/25/21  
and the (3) defendants failed to intervene on 5/25/21  
and Def Aragon stated he ordered Def's Gasca, Coronado  
— www.free-printable-paper.com TO CUFF plaintiff up on 5-25-2021 —

1 See (Exhibit "(Q) page 1: Contradicting Statement TS  
2 Def' Aragon, also stated in (Exhibit (J) pg 4, when he  
3 arrived to the TC2 yard he witnessed both inmates  
4 face down in a prone position with handcuffs placed  
5 on them. Also SEE (Ex:(L) pg 1.

6 ALSO: Def' Aragon, STATED: him and Coronado  
7 arrived to the incident on 5/25/2021 together  
8 SEE (Exhibit (B) pg 2.) But in (ex:(J.) pg 5: Def' Coronado  
9 stated. He ran over to Def' Gasca and placed him in  
10 mechanical restraints (handcuffs).

11 Exhibit (J.) pg 6. Def' Gasca stated, once it was safe and  
12 with responding staff Coronado I approached I/M Childs  
13 and placed him in restraints.

14 3) Def' Gasca and Coronado, failed to protect Plaintiff  
15 Def' GASCA, (Admitted,) he didn't see what took place  
16 between Brown & Childs on 5/25/2021, (See: Exhibit (E) pg 1  
17

18 All of Plaintiff Exhibits has covered and proved  
19 his fact to the defendants lied and tried to cover  
20 up the illegal act on 5/25/2021

21 Plaintiff pray this Court honor this opposing  
22 motion, and pray this Court honor the fact that  
23 Plaintiff is a pro-se inmate and a mental health  
24 patient and is on medication.  
25

26 I have read the above statements and declare under the penalty  
27 of perjury of the law of the state of California on 03/07/24  
28

March 7 / 2024

  
EARL CHILD  
proper  
plaintiff

1 Ed. 2d 249. However, no compensatory damages are to be awarded  
 2 for mere deprivation of a constitutional right unless some  
 3 actual injury or other loss is proven. Carey v. Piphus, supra,  
 4 435 U.S. at 264; Raditch v. United States (9th Cir. 1991) 929  
 5 F.2d 473, 482 n.5; Memphis Community School Dist. v. Starhura,  
 6 supra, 477 U.S. at 308; Soto v. Lord, (S.D.N.Y. 1982) 693  
 7 F.Supp. 8, 21.

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11 Punitive damages are designed to punish the defendants  
 12 for their conduct. Punitive damages are available only if the  
 13 defendant acted maliciously, with intent to cause the plaintiff  
 14 harm, or with recklessness amounting to deliberate indifference.  
 15 Smith v. Wade, supra, 461 U.S. at 55-56; Morgan v. Woessner  
 16 (9th Cir. 1993) 997 F.2d 1244, 1255; Kennedy v. Los Angeles  
 17 Police Dept. (9th Cir. 1989) 901 F.2d 702, 707. Punitive damages  
 18 are available even if the prisoner is unable to show  
 19 compensatory injury. Smith v. Wade, supra, 461 U.S. at 55-56.  
 20 Both compensatory and punitive damages must be pled and proven.  
 21 Carey v. Piphus, supra, 435 U.S. at 264.

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1                   B. The Law  
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3                   The Federal Declaratory Judgment Act provides that a  
4                   federal court "may declare the rights and other legal relations  
5                   of any interested party seeking such declaration, whether or  
6                   not further relief is or could be sought." 28 U.S.C. § 2201.  
7                   It is not necessary to show irreparable harm or inadequate  
8                   remedies at law to get a declaratory judgment. Rule 57, Fed.  
9                   Rules of Civil Procedure; see Aetna Life Ins. Co. v. Haworth,  
10                  300 U.S. 227, 241, 56 S. Ct. 461 (1937); Diaz v. Stathis, (1st  
11                  Cir. 1973) 557 F.2d 9, 11.

12  
13                  1. Liability  
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15                  Under Section 1983, when a defendant is sued for money  
16                  damages, the Plaintiff must specifically prove that the person  
17                  being sued is at fault; in other words, it must be proved that  
18                  the person's action or inaction was the actual cause of the  
19                  deprivation of rights. Leer v. Murphy, (9th Cir. 1986) 844  
20                  F.2d 623, 633-634. A person can deprive a prisoner of rights  
21                  by doing an affirmative act, by participating in another's  
22                  act, or by failing to do an act which he or she is required  
23                  to do. Leer v. Murphy, *supra*, 844 F.2d at 633; Ybarra v. Reno  
24                  Thunderbird Mobile Home Village, (9th Cir. 1984) 723 F.2d 675,  
25                  680-681; Johnson v. Duffy, (9th Cir. 1978) 588 F.2d 740; and,  
26                  Rizzo v. Goode (1976) 423 U.S. 362, 96 S. Ct. 598, 46 L. Ed.2d  
27                  561; King v. Higgins, (1st Cir. 1983) 702 F.2d 18, 21.

1 Supervisory officials can be found liable for money damages  
 2 if the plaintiff can show they had sufficient personal  
 3 involvement in the deprivation of rights. There are several  
 4 ways to show that a supervisory official was involved in the  
 5 deprivation. A plaintiff may be able to show that supervisors'  
 6 directed the deprivation of rights, or had actual knowledge  
 7 of the acts complained of and agreed to them or allowed them  
 8 to happen. Taylor v. List, (9th Cir. 1989) 880 F.2d 1040, 1045;  
 9 see, e.g., Barry v. Ratelle, (S.D.Cal. 1997) 985 F.Supp. 1225,  
 10 1239.

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12 2. Damages

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14 Money damages may be available if a plaintiff establishes  
 15 the defendants liability in a civil rights' action. The Supreme  
 16 Court has held that several types of damages are available  
 17 in civil rights' actions: compensatory, punitive and nominal  
 18 damages. Carey v. Piphus (1978) 435 U.S. 247, 98 S. Ct. 1042,  
 19 55 L. Ed. 2d 632; Smith v. Wade (1983) 461 U.S. 30, 103 S.  
 20 Ct. 1625, 75 L. Ed.2d 632; Borunda v. Richmond, (9th Cir. 1989)  
 21 885 F.2d 1384, 1389.

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23 Compensatory damages are designed to put the plaintiff,  
 24 through an award of money, in the same position as before the  
 25 constitutional violation occurred. Such damages may include  
 26 out-of-pocket losses, cost of medical expenses, other monetary  
 27 harms, and mental suffering. Memphis Community School Dist.  
 28 v. Starhura (1986) 477 U.S. 299, 308, 106 S. Ct. 2537, 91 L.

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Plaintiff is entitled  
to compensatory damages in the total amount of ~~10~~<sup>30</sup>.000 And,  
with respects to punitive damages awarded requested, Plaintiff  
is entitled to a jury trial based on evidence exist that  
demonstrate punitive damages may be warranted. toltal amont of  
30.000 dollars.

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#### D. Conclusion

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Plaintiff's motion should be granted because Defendants  
are liable for requested damages i.e. declaratory and injunctive  
relief, and compensatory and punitive damages; pursuant to  
26 U.S.C. § 1983.

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I Earl Childs State under penalty of perjury that the  
fourthgoing is true and correct to the best of my Knowledge.

3/18/2024



# EXHIBIT "A"

3 pages

Venue is proper because the events giving rise to the claims are alleged to have occurred at SVSP, which is located in this judicial district. *See 28 U.S.C. § 1391(b).*

## II. BACKGROUND

Plaintiff alleges the following in his complaint:

Plaintiff, who uses a cane and wears an ADA<sup>2</sup> mobility impaired vest, was housed at the mental health unit of SVSP during May of 2021. Dkt. 1 at 8. On May 25, 2021, at around 11:30 AM, Plaintiff walked out to the recreational yard (“rec yard”) with his vest and cane as well as his “safety sunglasses to protect [his] eyes due to . . . corneal transplant surgery performed on [his] right eye.” *Id.* As Plaintiff walked through the first gate, he passed Defendant Gasca, who was assigned to monitor and supervise the rec yard. *Id.* Plaintiff then walked through the last gate and Defendant Gasca said, “last one for yard.” *Id.*

Plaintiff walked to the yard tables, and as he was taking off his sunglasses he saw another inmate he had never seen before, who was initially standing several yards away, walk over to Plaintiff and then start attacking him. *Id.* at 9. Plaintiff states the other inmate, who he identified as "Inmate Brown - #BL3696," "started swinging at [Plaintiff] [and Inmate Brown] said, 'This is for the C/O's," before he punched Plaintiff two times in the face, and then in the upper body. *Id.* Plaintiff claims that after Inmate Brown hit him, Plaintiff "grabbed [Inmate Brown's] arms to restrain him from hitting [Plaintiff] in the face again." *Id.* Plaintiff called for help, saying as follows: "C/O help, help, I am being attacked, come and get this guy." *Id.* He called for help for "two minutes or longer," but "the officers did nothing to help [him]." *Id.* Another inmate, who Plaintiff identified as "[Inmate] Nguyen - #BM0511," ran to the gate and started calling for help. *Id.* Plaintiff claims that he and Inmate Brown started falling to the ground," and Plaintiff "somehow got the upper hand on (Brown) [and] [Plaintiff] got up and started restraining Brown." *Id.* at 10. It was at that moment that Plaintiff noticed Defendant Gasca and the other officers at the yard gate. *Id.* Plaintiff told the officers "Help, hit your alarm, he's still trying to attack me." *Id.* Defendant Gasca told Plaintiff to "let go of Brown." *Id.* But Plaintiff refused because Inmate

<sup>2</sup> ADA stands for the Americans with Disabilities Act of 1990.

1 Brown was “attempting to hit [Plaintiff] in the face,” and Plaintiff told Defendant Gasca, “If I let  
 2 him go he will keep attacking me.” *Id.* Plaintiff asked Defendant Gasca to open the gate, but  
 3 instead Defendant Gasca ordered all the inmates in the yard to get down and told Plaintiff that he  
 4 was “not going to open the gate until [Plaintiff] let [Brown] go.” *Id.* Plaintiff responded, “I’ve  
 5 been calling for help for over 2 minutes, plus I don’t hear no alarm.” *Id.* And then Plaintiff let  
 6 Inmate Brown go and walked by the yard restroom area. *Id.* Plaintiff heard the gate to the yard  
 7 open and the officers run into the yard. *Id.* Defendant Gasca ran toward Plaintiff and threw an  
 8 “O.C. can grenade” at him even though he “wasn’t holding Inmate Brown [and] [Inmate Brown]  
 9 was no longer attacking [Plaintiff].” *Id.* at 10-11.

10 After the “O.C. can grenade” was thrown, Defendants Gasca and Coronado approached  
 11 Plaintiff and ordered him to “get down on the ground.” *Id.* at 11. Plaintiff “told him [he] couldn’t  
 12 get down on the ground because [of his] mobility issues, and pointed to [his] cane that was sitting  
 13 nearby.” *Id.* Plaintiff told them he was “an ADA,” and Defendants Gasca and Coronado “tried to  
 14 grab [Plaintiff’s] wrist with unnecessary force and tried to handcuff [him] behind [his] back.” *Id.*  
 15 Plaintiff, who denies that he resisted, told Defendant Gasca that he “needed to be cuffed in front  
 16 because [of] [his] medical chrono.” *Id.* Defendant Gasca stated, “I don’t care,” and “continue[d]  
 17 to ruff[] [Plaintiff] up with unnecessary force, and cuffed [him] behind [his] back.” *Id.* Plaintiff  
 18 asked if he could grab his cane, but Defendant Gasca denied his request while Defendants  
 19 Coronado and Aragon were standing close by. *Id.* Defendant Aragon ordered Defendants Gasca  
 20 and Coronado to search Plaintiff and escort him to the “T.C. 2 Treatment room.” *Id.* Defendants  
 21 Gasca directed Plaintiff to stand, but Plaintiff stated he could not. *Id.* Defendant Gasca “grabbed  
 22 [Plaintiff’s] arm, with force,” and as Plaintiff was trying to stand, he slipped and “scrap[]ed [his]  
 23 knee on the ground.” *Id.* at 11-12. Defendant Coronado helped Defendant Gasca assist Plaintiff  
 24 to his feet, and they escorted Plaintiff to the treatment room. *Id.* at 12.

25 The nurse documented Plaintiff’s injuries. *Id.* Plaintiff suffered a black left eye and “had  
 26 abrasions on [his] hands, knees and forearms,” including “permanent scarring to [his] legs, face,  
 27 hands and knees.” *Id.* at 12-14. Plaintiff also claims that he “continue[s] to have ongoing  
 28 suffering frequent headaches, nightmares about the assault, and psychological traum[a].” *Id.* at 14.

1 After Plaintiff saw the nurse, Defendant Gasca took Plaintiff back to his cell. *Id.* at 12. Once  
 2 Plaintiff got to his cell, he noticed that his cane was on his bed. *Id.*

3 Plaintiff filed a 602 inmate appeal, and Defendant Gasca wrote a “false [Rules Violation  
 4 Report (“RVR”)]” about the incident. *Id.* at 13. Plaintiff was issued an RVR for fighting, and “at  
 5 the RVR hearing the RVR was dropped and it stated ‘[Plaintiff] was defending himself.’” *Id.*

6 Plaintiff lists the following claims in his complaint: (1) Defendants Gasca, Coronado, and  
 7 Aragon were deliberately indifferent to Plaintiff’s safety by failing to intervene during the May 25,  
 8 2021 attack on Plaintiff by Inmate Brown; (2) Defendants Gasca used excessive force when he  
 9 grabbed Plaintiff’s wrist with “unnecessary force” and “ruff[ed] [him] up, with unnecessary force  
 10 and cuffed [him] behind [his] back,” while Defendants Coronado and Aragon failed to intervene,  
 11 Dkt. 1 at 11; (3) Defendant Gasca’s aforementioned actions of violating Plaintiff’s Eighth  
 12 Amendment rights was “for the very purpose of causing Plaintiff harm and out of retaliation,” *id.*  
 13 at 16; (4) Defendants Gasca and Coronado discriminated against Plaintiff by “intentionally  
 14 deny[ing] [Plaintiff] [his] ADA cane,” *id.* at 16-17, and ignoring his “special chrono to be cuffed  
 15 to the front,” *id.*, while Defendant Aragon failed to intervene; (5) Defendant Gasca “falsif[ied] [a]  
 16 government report to cover up his violation” on May 25, 2021; *id.* at 14; and (6) Defendant  
 17 Aragon failed to “exercise his supervisory responsibility and prevent . . . [Defendant] Gasca from  
 18 violating [Plaintiff’s] rights,” *id.* at 19.

19 **III. DISCUSSION**

20 **A. Standard of Review**

21 A federal court must conduct a preliminary screening in any case in which a prisoner seeks  
 22 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
 23 § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims  
 24 that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek  
 25 monetary relief from a defendant who is immune from such relief. *Id.* § 1915A(b)(1), (2). *Pro se*  
 26 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th  
 27 Cir. 1988).

28 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:

# **EXHIBIT “B”**

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1 responsible for monitoring inmates and maintaining order and security in his assigned area, and  
2 was designated as a Code 1 responder, which required him to respond to alarms or radio calls  
3 announcing emergency situations, including altercations between inmates. (Coronado-Rodriguez  
4 Decl. ¶¶ 1-3.) Defendant Aragon was employed by CDCR as a program sergeant overseeing TC2  
5 on May 25, 2021, was responsible for supervising correctional officers in TC2, and was  
6 designated as a Code 1 responder, which required him to respond to alarms or radio calls  
7 announcing emergency situations, including altercations between inmates. (Aragon Decl. ¶¶ 1-3.)

8 **II. DEFENDANT GASCA DEPLOYED AN OC BLAST GRENADE TO QUELL THE PHYSICAL  
9 ALTERCATION BETWEEN PLAINTIFF AND INMATE BROWN ON MAY 25, 2021, AND  
10 CORONADO-RODRIGUEZ AND ARAGON ARRIVED AFTER THE ALTERCATION WAS  
OVER.**

11 The TC2 recreational yard is an enclosed area connected to the TC2 building by a short  
12 breezeway of no more than twenty feet, and inmates are secured inside the yard while a  
13 correctional officer monitors the inmates' activities from the breezeway. (Gasca Decl. ¶ 3; Childs  
14 Dep. 42:14-18, 43:20-44:13, 44:24-45:17.)

15 At approximately, 11:44 a.m., Gasca was observing yard when he saw inmate Brown strike  
16 Plaintiff in Plaintiff's upper torso and Plaintiff put Brown into a chokehold and bring Brown  
17 down to a seated position on the ground. (Gasca Decl. ¶ 6; Childs Dep. 54:4-8, 55:2-6, 56:7-  
18 57:3.) While Plaintiff had Brown in a chokehold, Brown was screaming for help and begging  
19 Plaintiff not to choke Brown out and to let Brown go. (Childs Dep. 56:5-57:3, 93:5-7.) Gasca  
20 immediately announced the fight on his institutional radio and ordered both inmates to stop  
21 fighting and get down, but Plaintiff maintained his chokehold on Brown as Brown continued to  
22 strike at Plaintiff's facial area. (Gasca Decl. ¶ 6; Childs Dep. 58:16-19, 59:17-60:4.)

23 Fearing for the inmates' safety, Gasca opened the yard door while continuing to issue  
24 verbal orders, and threw an OC blast grenade approximately ten feet away from where the  
25 inmates were still fighting. (Gasca Decl. ¶ 7; Childs Dep. 61:11-24.) Upon seeing Gasca deploy  
26 the OC-blast-grenade, Plaintiff and Brown immediately stopped fighting and ran in opposite  
27 directions. (Gasca Decl. ¶ 7; Childs Dep. 61:11-24.)

1       2.   Was either Defendant Coronado-Rodriguez or Defendant Aragon deliberately  
2    indifferent to a substantial risk of serious harm to Plaintiff when neither had any prior reason to  
3    believe that inmate Brown presented a threat to Plaintiff, and they immediately responded to  
4    Gasca's radio call and responded to the scene to find that the fight was already over and the  
5    inmates had separated from each other?

6       3.    Are Defendants entitled to qualified immunity from Plaintiff's claim because  
7 reasonable correctional officers in their position could have believed that responding to a fist fight  
8 between two inmates — whom they had no prior reason to believe presented any threat to each  
9 other — by promptly summoning backup, issuing commands to stop fighting, and when the fight  
10 continued, deploying a pepper-spray grenade, or by promptly responding to the call for backup,  
11 would not constitute cruel and unusual punishment in violation of the Eighth Amendment?

## STATEMENT OF FACTS

## I. SUMMARY OF PARTIES AND PLAINTIFF'S CLAIM

14 Plaintiff Earl Childs is an inmate incarcerated by the California Department of Corrections  
15 and Rehabilitation (CDCR) and was housed in Treatment Center 2 (TC2) at Salinas Valley State  
16 Prison (SVSP), when the incident giving rise to his complaint occurred. (Complaint at 1-2, 7-8,  
17 ECF No. 1; Gasca Decl. ¶ 4; Coronado-Rodriguez Decl. ¶ 4; Aragon Decl. ¶ 4.) Plaintiff  
18 proceeds only on a deliberate indifference to safety claim, in which he alleges that Defendants  
19 failed to intervene during a physical altercation between Plaintiff and non-party inmate Brown  
20 that occurred on the TC2 recreation yard on May 25, 2021. (Complaint at 8-10, 18-19; Order of  
21 Partial Dismissal with Leave to Amend at 6, 12, ECF No. 10.) Before the altercation occurred,  
22 there were no safety concerns between Plaintiff and inmate Brown, and neither Plaintiff nor  
23 Defendants had any reason to know Plaintiff was at any risk of harm from Brown. (Gasca Decl.  
¶ 4.5; Coronado-Rodriguez Decl. ¶ 4.5; Aragon Decl. ¶ 4.5; Childs Decl. 47:16-25, 48:6-22.)

25 Defendant Gasca was employed by CDCR as a floor officer in TC2 on May 25, 2021, and  
26 was responsible for monitoring inmates and maintaining order and security in his assigned area,  
27 including responding to altercations between inmates. (Gasca Decl. ¶¶ 1-3.) Defendant  
28 Coronado-Rodriguez was employed by CDCR as a floor officer in TC2 on May 25, 2021,

1 At approximately 11:44 a.m., Defendants Coronado-Rodriguez and Aragon responded to  
2 Gasca's alarm, but when they arrived Plaintiff and Brown had already stopped fighting and  
3 separated from each other. (Coronado-Rodriguez Decl. ¶ 6; Aragon Decl. ¶ 6; Childs Dep. 60:5-  
4 13.) Gasca and Coronado-Rodriguez restrained Plaintiff and, at Aragon's order, escorted Plaintiff  
5 for a medical evaluation and the opportunity to decontaminate from the OC blast grenade, and  
6 then brought Plaintiff back to his assigned cell without any further incident. (Gasca Decl. ¶¶ 8-9;  
7 Coronado-Rodriguez Decl. ¶¶ 7-8; Aragon Decl. ¶¶ 9; Childs Dep. 68:1-19, 69:21, 71:24-72:4,  
8 72:16-25.)

9 At approximately 1:45 p.m., Aragon individually interviewed Plaintiff and Brown about the  
10 altercation and both confirmed they had no safety concerns with each other and signed a  
11 compatibility chrono indicating they could continue to live and program safely together. (Aragon  
12 Decl. ¶ 11 & Ex. A; Childs Dep. 76:2-9.)

### 13 SUMMARY OF PLAINTIFF'S CLAIMS

14 Plaintiff proceeds only on his claim that Defendants failed to intervene during the May 25,  
15 2021, ~~incident~~ with inmate Brown. (Order of Partial Dismissal with Leave to Amend at 6, ECF  
16 No. 10; Order of Partial Dismissal and Scheduling Summary Judgement Briefing at 1, ECF No.  
17 40.)

18 Plaintiff also asserted claims that Defendants used excessive force against him, retaliated  
19 against him, discriminated against him by denying him disability and mobility accommodations,  
20 and falsified their reports of the incident, but the Court dismissed those claims, finding Plaintiff  
21 had failed to plead facts sufficient to support them. (Order of Partial Dismissal with Leave to  
22 Amend at 6-12, ECF No. 10; Order of Partial Dismissal and Scheduling Summary Judgement  
23 Briefing at 1-2, ECF No. 40.) Finally, Plaintiff advanced a supervisory theory of liability against  
24 Defendant Aragon, but the Court also dismissed that claim as unsupported. (Order of Partial  
25 Dismissal with Leave to Amend at 12, ECF No. 10; Order of Partial Dismissal and Scheduling  
26 Summary Judgement Briefing at 1-2, ECF No. 40.)

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## STANDARD OF REVIEW

## I. LEGAL STANDARD FOR SUMMARY JUDGMENT UNDER RULE 56.

Federal Rule of Civil Procedure 56 provides that a summary-judgment motion shall be granted when there is no genuine issue as to any material fact, and if the moving party is entitled to judgment as a matter of law. In *Celotex Corporation v. Catrett*, 477 U.S. 317, 322-23 (1986), the Supreme Court held that Rule 56(c) mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. The non-moving party's failure of proof on an essential element of its claim renders all other facts immaterial. *Id.*

To prevent entry of summary judgment, Plaintiff must present competent evidence showing that there are genuine issues of material fact regarding whether Defendant violated his rights. *Berg v. Kincheloe*, 794 F.2d 457, 459 (9th Cir. 1986). Plaintiff cannot rest solely on conclusory allegations (*id.*), but must present “specific facts showing that there is a genuine issue for trial.” *Celotex*, 477 U.S. at 323-24. A fact is material only if it affects the outcome of the case under applicable substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Summary judgment may be granted if the non-moving party’s evidence is merely colorable or is not significantly probative. *Id.* at 250-51. “The mere existence of a scintilla of evidence in support of the non-moving party’s position is not sufficient.” *Triton Energy Corp. v. Square D Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995). Additionally, if the non-moving party’s version of facts is “blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372, 380 (2007).

## ARGUMENT

## I. DEFENDANTS WERE NOT DELIBERATELY INDIFFERENT TO PLAINTIFF'S SAFETY.

The undisputed evidence shows that Defendants were not deliberately indifferent to a substantial risk of serious harm to Plaintiff's safety, but instead responded to the incident reasonably and appropriately. Neither Plaintiff nor any of the Defendants had any prior reason to believe that inmate Brown presented a threat to Plaintiff. Defendant Gasca observed the inmates

1 1196, 1199 (9th Cir. 2010) (citations omitted). The court must “determine whether the  
 2 preexisting law provided the defendants with ‘fair warning’ that their conduct was unlawful.”  
 3 *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1137 (9th Cir. 2003) (quoting *Hope v.*  
 4 *Pelzer*, 536 U.S. 730, 740 (2002)). “The relevant, dispositive inquiry in determining whether a  
 5 right is clearly established is whether it would be clear to a reasonable officer that his conduct  
 6 was unlawful in the specific factual situation” he was confronted with. *Saucier*, 533 U.S. at 202  
 7 (citing *Wilson v. Layne*, 526 U.S. 603, 615 (1999)).

8 “[A]bsent controlling authority” there must be “a robust ‘consensus of cases of persuasive  
 9 authority.’” *Ashcroft*, 563 U.S. at 741-742. Neither a general proposition, nor dictum in a  
 10 footnote is adequate. *Id.* Indeed, the “existing precedent must have placed the statutory or  
 11 constitutional question beyond debate.” *Id.* at 741. Plaintiff bears the burden of proving the law  
 12 was clearly established. *Davis v. Scherer*, 468 U.S. 183, 197 (1984).

13 **B. Defendant Gasca’s Response to the Incident Was Not Clearly Unlawful.**

14 As discussed at greater length above, the undisputed evidence establishes that no  
 15 constitutional violation occurred. Defendant Gasca observed Brown punch Plaintiff and Plaintiff  
 16 put Brown in a headlock and bring Brown to the ground while Brown continued to throw  
 17 punches. (Gasca Decl. ¶ 6; Childs Dep. 54:4-8, 55:2-6, 56:7-57:3, 58:16-19, 59:17-60:4.) Gasca  
 18 immediately announced the fight on the radio and began ordering the inmates to stop fighting and  
 19 get down. (Gasca Decl. ¶ 6; Childs Dep. 58:16-19, 59:17-60:4.) When the inmates did not  
 20 comply with his orders and continued fighting, Gasca deployed an OC blast grenade at the feet of  
 21 the inmates, which caused them to stop fighting and separate from each other. (*Id.*) Far from  
 22 consciously ignoring a risk to Plaintiff, Gasca immediately responded and acted to end the fight.

23 Moreover, especially in light of the *Smith v. Ducart* case in which the Northern District  
 24 granted summary judgment on nearly identical facts and theories, it was not clearly established  
 25 that Gasca’s response was unlawful. There is no controlling authority prohibiting Gasca’s  
 26 response, nor is there a robust consensus of persuasive authority that would have made it clear to  
 27 every reasonable officer in Gasca’s position that Gasca’s response was unlawful. Case law  
 28 mandates that correctional officers take reasonable steps to protect inmates from physical harm,

1       **II. DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY.**2       **A. Standard for Qualified Immunity.**

3       Qualified immunity “shield[s] [government agents] from liability for civil damages insofar  
 4       as their conduct does not violate clearly established statutory or constitutional rights of which a  
 5       reasonable person would have known.”” *Behrens v. Pelletier*, 516 U.S. 299, 305 (1996) (quoting  
 6       *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). “The general rule of qualified immunity is  
 7       intended to provide government officials with the ability ‘reasonably [to] anticipate when their  
 8       conduct may give rise to liability for damages.’” *Anderson v. Creighton*, 483 U.S. 635, 646  
 9       (1987) (citing *Davis v. Scherer*, 468 U.S. 183, 195 (1984)). Generally, the qualified immunity  
 10       doctrine must “‘give[ ] ample room for mistaken judgments’ by protecting ‘all but the plainly  
 11       incompetent or those who knowingly violate the law.’” *Hunter v. Bryant*, 502 U.S. 224, 229  
 12       (1991). “Qualified immunity gives government officials breathing room to make reasonable but  
 13       mistaken judgments about open legal questions.” *Ashcroft v. al-Kidd*, 563 U.S. 731, (2011).

14       In analyzing a claim of qualified immunity, one inquiry, though not necessarily the first, is  
 15       whether a constitutional right was violated on the facts alleged. *Saucier*, 533 U.S. at 201;  
 16       *Pearson*, 555 U.S. at 231-36. “If no constitutional right would have been violated were the  
 17       allegations established, there is no necessity for further inquiries concerning qualified immunity.”  
 18       *Saucier*, 533 U.S. at 201.

19       Assuming a constitutional violation, the question remains whether the right was clearly  
 20       established. “This inquiry, it is vital to note, must be undertaken in light of the specific context of  
 21       the case, *not as a broad general proposition . . .*” *Id.* (emphasis added). “A clearly established  
 22       right is one that is sufficiently clear that every reasonable official would have understood that  
 23       what he is doing violates that right.” *Mullenix v. Luna*, 577 U.S. 7, 11-12 (2015). The United  
 24       States Supreme Court has “repeatedly told courts . . . not to define clearly established law at a high  
 25       level of generality.” *Ashcroft*, 563 U.S. 742

26       This prong of the *Saucier* analysis is “‘solely a question of law for the judge,’ . . .  
 27       Therefore, . . . it is proper for [the Court] to reach the inquiry into whether the facts as alleged  
 28       supported a reasonable officer’s belief that his conduct was lawful.” *Dunn v. Castro*, 621 F.3d

# **EXHIBIT "C"**

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3 pages  
front & Back  
Ex

## Exhibit C

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

EARL CHILDS,

**Plaintiff,**

4:21-cv-09466-DMR

**ANSWER TO COMPLAINT AND  
DEMAND FOR JURY TRIAL**

H. GASCA, et al.,

## Defendants.

Defendants Gasca, Aragon, and Coronado-Rodriguez hereby answer Plaintiff's Complaint, filed December 9, 2021 (ECF No. 1), as follows. Except as expressly admitted, all allegations are denied.

1. In response to pages 1-2, "Exhaustion of Administrative Remedies," Defendants admit the allegations in this section, but note that at the time Plaintiff filed his complaint, he was confined at the California Health Care Facility (CHCF) in Stockton, California, and at the time of filing this answer, Plaintiff is currently confined at California State Prison, Los Angeles County in Lancaster, California.

1           2. In response to pages 2 and 6-7, "Parties," Defendants admit that H. Gasca, M.  
 2           Coronado-Rodriguez, and O. Aragon, were correctional officers employed by the California  
 3           Department of Corrections and Rehabilitation (CDCR) and were assigned to work at Salinas  
 4           Valley State Prison on the date of the alleged incident, that actions Defendants take in the course  
 5           of their job assignments are done under color of law, that Plaintiff was housed at CHCF when he  
 6           filed this complaint, that the alleged incident took place on May 25, 2021, and that the alleged  
 7           incident took place at SVSP. Defendants deny that any of Plaintiff's civil rights were violated.

8           3. In response to pages 2-5, "Statement of Claim," Defendants admit that on May 25,  
 9           2021, Plaintiff was involved in a fight with another inmate, that Defendant Gasca announced that  
 10          there was a fight over the institutional radio, that Gasca responded to the fight and ordered the  
 11          inmates to get down, that Gasca deployed an OC blast grenade, and that Defendants Aragon and  
 12          Coronado-Rodriguez responded to the fight. Defendants further admit that Gasca and Coronado-  
 13          Rodriguez secured Plaintiff in restraints, searched him for contraband, and escorted Plaintiff to  
 14          the TC2 treatment room to be medically evaluated at Aragon's orders. Defendants further admit  
 15          that Defendant Aragon was responsible for supervising staff members assigned to him and had a  
 16          general duty to ensure the safety and security of inmates and staff at the institution. Defendants  
 17          lack knowledge or information sufficient to form a belief as to whether the inmate fighting with  
 18          Plaintiff said "This is for the C/O's," and on that basis deny the allegation. Defendants deny the  
 19          remaining allegations in this section.

20           4. In response to page 8, "The following civil right has been violated:" Defendants deny  
 21          that any of Plaintiff's rights were violated.

22           5. In response to pages 8-13, "Supporting facts," Defendants admit that on May 25,  
 23          2021, Plaintiff was housed at SVSP in housing unit I 002B1, that Plaintiff got into a fight with  
 24          inmate Brown and put Brown in a chokehold while Brown hit Plaintiff in the face, that Plaintiff  
 25          brought Brown down to a seated position, that Gasca ordered Plaintiff and inmate Brown to stop  
 26          fighting, that Gasca deployed an OC blast grenade, that Plaintiff was restrained after the fight  
 27          stopped, that Aragon ordered Gasca and Coronado-Rodriguez to search Plaintiff and escort him to  
 28          a treatment room, that Plaintiff was medically evaluated immediately after the fight and an

# INJURIES

1 abrasion/scratch was found on Plaintiff's left knee, that Plaintiff submitted a 602 inmate  
 2 grievance about fight claiming Gasca falsified his report, and that at the related disciplinary  
 3 hearing, Plaintiff was found not guilty of fighting because he was defending himself.  
 4 ~~Y~~ Defendants lack knowledge or information sufficient to form a belief as to whether Plaintiff  
 5 was under an ICF PC 1370 level of care, what Plaintiff did on May 25, 2021, before coming out  
 6 to the yard, whether Plaintiff was the last inmate for yard, whether Defendant Gasca said Plaintiff  
 7 was the "last one for yard," what Plaintiff did before getting into a fight with inmate Brown,  
 8 whether Brown started swinging at Plaintiff, whether Brown told Plaintiff, "This is for the C/O's,  
 9 how many times Brown hit Plaintiff before Plaintiff put Brown in a choke hold, whether Plaintiff  
 10 screamed for help, whether Plaintiff called for help for two minutes or longer, whether another  
 11 inmate named Nguyen ran to the gate and called for help, what Plaintiff's goals were during the  
 12 fight, whether Plaintiff asked other officers to hit their alarms, whether Brown told nurses  
 13 "Nobody else wanted to step up to the plate and get PAID (sic)," whether Gasca talked to  
 14 Plaintiff about the fight twenty minutes after Plaintiff was medically evaluated, and whether  
 15 nurses told Plaintiff Brown said, "Nobody wanted to step up and handle that dude," and on that  
 16 basis deny those allegations.

17 Defendants deny the remaining allegations in this section.

18 6. In response to pages 13-14, "Injury/Injuries," Defendants admit that after the fight  
 19 Plaintiff had an abrasion/scratch on his left knee. Defendants lack knowledge or information  
 20 sufficient to form a belief as to whether Plaintiff had surgery to his right eye before the assault,  
 21 whether Brown's punch forced him to go back to the eye specialist to have the eye repaired and  
 22 release pressure, whether Plaintiff continues to experience dizziness, whether Plaintiff hit his  
 23 hand on the dayroom table causing it to bruise and swell up, whether Plaintiff hit his leg on the  
 24 table causing it to bleed, whether it hurts Plaintiff to walk, whether Plaintiff's injuries caused  
 25 permanent scaring to his legs, face, hands, and knees, whether Plaintiff suffers ongoing headaches  
 26 and nightmares because of the fight, whether he has post-traumatic stress disorder, overwhelming  
 27 anxiety, or lives in fear of future assault, and on that basis deny those allegations. Defendants  
 28 deny the remaining allegations in this section.

1        7. In response to pages 15 and 16, "Each Defendant's Responsibility, (1) H. Gasca,"  
 2        Defendants admit that Gasca is a correctional officer who was assigned to work at SVSP in  
 3        treatment center two in the mental health building on the day of the fight, that Gasca also  
 4        monitors inmates on the yard, and that Gasca had a general duty to take reasonable steps to ensure  
 5        the safety and security of staff and inmates at KVSP. Defendants deny the remaining allegations  
 6        in this section.

7        8. In response to page 17, "Each Defendant's Responsibility, (2) M. Coronado-  
 8        Rodriguez," Defendants admit that Coronado-Rodriguez is a correctional officer who was  
 9        assigned to work at treatment center two in the mental health building on the day of the fight, that  
 10       Coronado-Rodriguez responded to the fight, and that Coronado-Rodriguez had a general duty to  
 11       take reasonable steps to ensure the safety and security of staff members and inmates at KVSP.  
 12       Defendants deny the remaining allegations in this section.

13       9. In response to pages 18-19, "Each Defendant's Responsibility, (3) O. Aragon,"  
 14       Defendants admit that Aragon is a sergeant at KVSP working at treatment center two currently  
 15       and on the day of the fight, that Aragon was the program sergeant who responded to the fight, that  
 16       Aragon was responsible for supervising the yard, and that Aragon had a general duty to take  
 17       reasonable steps to ensure the safety and security of staff members and inmates at KVSP.  
 18       Defendants deny the remaining allegations in this section.

19       10. In response to page 20, "Relief," Defendants deny that Plaintiff is entitled to any  
 20       relief.

21       11. In response to the attachment entitled "Exhibits (ECF No. 1-1)," Defendants admit  
 22       that Plaintiff has attached what appear to be the exhibits he lists in the first two pages of the  
 23       attachment. Defendants lack knowledge as to whether any of the attached documents are  
 24       authentic or are true and correct copies of the records Plaintiff purports them to be, and on that  
 25       basis deny their authenticity.

26       12. Defendants deny all allegations not expressly admitted.

27

28

## AFFIRMATIVE DEFENSES

### First Affirmative Defense

3 Defendants are entitled to qualified immunity because their conduct, including their  
4 response to the fight and interactions with Plaintiff after the fight, was objectively reasonable and  
5 did not violate any clearly established constitutional or statutory rights of Plaintiff.

### Second Affirmative Defense

7 Any and all alleged happenings and events, damages, and injuries, if any, were proximately  
8 caused and contributed to by Plaintiff's own negligence and conduct, insofar as he engaged in the  
9 fight with inmate Brown.

I was a fluke

### Third Affirmative Defense

11 At all relevant times, Plaintiff failed to mitigate injury and damages.

## Other Affirmative Defenses

13 Because the Complaint sets forth conclusory and confusing allegations, all affirmative  
14 defenses that may be applicable cannot be fully anticipated. Accordingly, Defendants reserve the  
15 right to assert additional affirmative defenses, if, and to the extent that, such affirmative defenses  
16 are applicable.

## DEMAND FOR JURY TRIAL

18 Under Federal Rule of Civil Procedure 38, Defendants demand that this matter be tried by a  
19 jury.

20 | //

21 || //

22 || //

23 | //

24 //

25 | //

26 //

27 //

28 //

## PRAYER FOR RELIEF

WHEREFORE, Defendants pray that:

1. Plaintiff take nothing by reason of this action and that judgment be entered in favor of defendants;
2. Defendants be awarded costs of suit and attorney's fees; and
3. Defendants be awarded such other relief as the Court may deem proper.

Dated: October 7, 2022

Respectfully submitted,

ROB BONTA  
Attorney General of California  
JON S. ALLIN  
Supervising Deputy Attorney General

/s/ *David E. Kuchinsky*  
DAVID E. KUCHINSKY  
Deputy Attorney General  
*Attorneys for Defendants H. Gasca,  
O. Aragon, and M. Coronado-Rodriguez*

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# EXHIBIT “D”

2Pages

Exhibit D

1

1 REQUEST FOR ADMISSION NO. 6:

2 Admit that you perform an unclothed body search on Plaintiff after placing him in his cell  
3 on 05/25/2021.

4 RESPONSE TO REQUEST FOR ADMISSION NO. 6:

5 Admit.

6 REQUEST FOR ADMISSION NO. 7:

7 Admit that you were aware of Plaintiff having a A D A vest and cane.

8 RESPONSE TO REQUEST FOR ADMISSION NO. 7: *He is lying cause*  
9 Deny. *I have a chrono - Show it*

10 REQUEST FOR ADMISSION NO. 8:

11 Admit that Plaintiff told you he has a chrono to be cuffed with waist restraints due to he  
12 has a crane.

13 RESPONSE TO REQUEST FOR ADMISSION NO. 8:

14 Deny.

15 REQUEST FOR ADMISSION NO. 9:

16 *Admit that you locked the recreational yard gate after Plaintiff entered.*

17 RESPONSE TO REQUEST FOR ADMISSION NO. 9: *He called out last time for you*

18 Admit. *He called out last time for you*

19 REQUEST FOR ADMISSION NO. 10:

20 *Admit that you and Coronado approached Childs together on May 25, 2021.* *At 3 Coronado*  
*will he*

21 RESPONSE TO REQUEST FOR ADMISSION NO. 10:

22 Admit. *They both approached* *van over*  
*to Childs* *see*  
*Clouds*

23 REQUEST FOR ADMISSION NO. 11:

24 Admit that SGT, Aragon instructed you to cuff Childs to the back.

25 RESPONSE TO REQUEST FOR ADMISSION NO. 11:

26 Deny. *I lied*

27 REQUEST FOR ADMISSION NO. 12:

28 Admit that you seen inmate Brown punch Childs first.

*If he seen this why wasn't Brown write up for battery?*

Exhibit # D 2

1 Admissions in accordance with Federal Rule of Civil Procedure 36. These Requests for  
2 Admissions are reproduced exactly as drafted by Plaintiff

3 **REQUEST FOR ADMISSION NO. 1:**

4 Admit that you Coronado responded to the fight on T.C.2 on May 25, 2021.

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

6 Admit.

7 **REQUEST FOR ADMISSION NO. 2:**

8 Admit that once you got to the recreation yard all the inmates were pronounced out.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

10 Admit.

11 **REQUEST FOR ADMISSION NO. 3:**

12 Admit that you ran over to officer Gasca while he was standing over Childs on May 25,  
13 2021.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

15 Admit.

16 **REQUEST FOR ADMISSION NO. 4:**

17 Admit that you was standing next to c/o Gasca when he hand cuffed Childs.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

19 Admit.

20 **REQUEST FOR ADMISSION NO. 5:**

21 Admit that you heard Childs state he's ADA and use a cane.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

23 Deny.

24 **REQUEST FOR ADMISSION NO. 6:**

25 Admit that you wrote in your incident report that Gasca conducted a un-clothed body  
26 search (sic) on Inmate Childs on May 24, 2021.

27 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

28 Admit.

# **EXHIBIT “E”**

---

Exhibit E

Pg 1

## 1 REQUEST FOR ADMISSION NO. 1:

2 Admit that you were standing over Childs when c/o Coronado approached you to assist  
3 you on 5/25/2021

## 4 RESPONSE TO REQUEST FOR ADMISSION NO. 1:

5 Admit insofar as Defendant was standing next to Plaintiff after Plaintiff had proned out on  
6 the ground.

## 7 REQUEST FOR ADMISSION NO. 2:

8 Admit that you seen how the whole incident on 5/25/2021 between Brown and Childs take  
9 place.

## 10 RESPONSE TO REQUEST FOR ADMISSION NO. 2:

11 Deny.

## 12 REQUEST FOR ADMISSION NO. 3:

13 Admit that you placed Childs cane and vest in his cell after the incident on 5-25-2021.

## 14 RESPONSE TO REQUEST FOR ADMISSION NO. 3:

15 Objection. This request calls for information that is not relevant to any element of a claim  
16 or defense of any party. Plaintiff proceeds only on his claim that Defendant failed to protect him  
17 from an attack by another inmate. Whether Defendant put any of Plaintiff's property back in  
18 Plaintiff's cell has no probative value in this case. Without waiving any objection, Defendant  
19 lacks knowledge or information sufficient to admit or deny this request and a review of records  
20 relating to the incident does not refresh his memory and on that basis denies.

## 21 REQUEST FOR ADMISSION NO. 4:

22 Admit that you never seen Childs walking around (T C 2) with a cane, vest, while h was  
23 house in that unit or on any days you worked in (TC 2) in 2021.

## 24 RESPONSE TO REQUEST FOR ADMISSION NO. 4:

25 Deny.

26

27

28

Exhibit E  
Pg 2

1 accordance with applicable discovery rules. Defendant makes these responses to the Request for  
2 Production of Documents in accordance with Federal Rule of Civil Procedure 34. These requests  
3 for production are reproduced exactly as drafted by Plaintiff

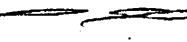
4 **REQUEST FOR ADMISSION NO. 1:**

5 Admit that you worked on T C 2 as the C/O that was supposed to be monitoring the  
6 morning recreational yard, on 05/25/2021.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

8 Admit. 

9 **REQUEST FOR ADMISSION NO. 2:** 

10 Admit that you didn't see how the incident between inmates Brown and Child's started on  
11 05/25/2021. 

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:** 

13 Admit insofar as the first thing Defendant observed was Brown striking Plaintiff and  
14 Plaintiff placing Brown into a chokehold. 

15 **REQUEST FOR ADMISSION NO. 3:**

16 Admit that you stepped into the T C 2 unit while yard was going on 05/25/2021. 

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

18 Deny. *He didn't see what started.*

19 **REQUEST FOR ADMISSION NO. 4:**

20 Admit that you wrote Plaintiff up for fighting on May 25, 2021

21 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

22 Admit. 

23 **REQUEST FOR ADMISSION NO. 5:**

24 Admit that you did cuff Plaintiff to the back, meaning you put hand cuffs on Childs to the  
25 back, on 05/25/2021. 

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

27 Admit. *Please I use a cane* 

28

# EXHIBIT “F”

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3 Pages

Exhibit #F

PG  
1

## ARTICLE 22 -EMPLOYEE DISCIPLINE

Effective January 2006

## 33030.3.3 Law Enforcement Code of Ethics

Peace officers employed by the Department are held to a higher standard of conduct on and off duty, as specified in the Law Enforcement Code of Ethics and the peace officer oath. The Law Enforcement Code of Ethics is as follows:

*As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all people to liberty, equality and justice.*

*I will keep my public and private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or my Department. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life. I will be exemplary in obeying the law and the regulations of my department.*

*I will never act officiously or permit personal feelings, prejudices, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.*

*Confidential information received in my official capacity shall remain undisclosed unless disclosure is necessary in the performance of my duty. I will never engage in acts of corruption, bribery, insubordination or the obstruction of justice, nor will I condone such acts by other peace officers. I will immediately report acts of misconduct by staff of my department and cooperate with all legally authorized agencies and their representatives in the pursuit of justice. I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.*

*I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am serving as a law enforcement officer. I will constantly strive to achieve these objectives and ideals, dedicating myself before all present to my chosen profession... law enforcement.*

239

26

**3270.1. Lethal Electrified Fences.**

(a) For the purposes of this section, a lethal electrified fence is a high voltage fence installed for the lethal infliction of injury to escaping inmates.

(b) Safety precautions shall be instituted to prevent accidental electrocution. These precautions shall include, but are not limited to, the following:

- (1) The posting of warning signs on the inner and outer perimeters of the facility informing staff, inmates, and the public of the presence of a lethal electrified fence.
- (2) A visual inspection of the lethal electrified fence area at least once per shift.
- (3) Regular inspections by an outside patrol of the perimeter areas.
- (4) The presence of a staff person trained in energizing and deenergizing the fence prior to any authorized person entering the lethal electrified fence area.
- (5) Inspections of lethal electrified fences as specified by a routine maintenance schedule.
- (6) The insulation of lethal electrified fences between two security fences.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2052 and 5054, Penal Code.

**HISTORY:**

1. New section filed 12-15-93 as an emergency; operative 12-15-93 (Register 93, No. 51). A Certificate of Compliance must be transmitted to OAL by 4-25-94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4-15-94 as an emergency; operative 4-25-94 (Register 94, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-23-94 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of Government Code section 11346.1(g) (Register 94, No. 37).
4. New section including amendments, refiled 9-15-94; operative 9-15-94 (Register 94, No. 37).

**3270.2. Audio-Video Surveillance Systems.**

(a) The department may use audio, video, or both forms of recording technology within and surrounding any of its properties, institutions, facilities, perimeter fencing, or vehicles.

(b) Such technology shall not be used to record the interiors of cells except in case of emergency or investigation as authorized by the warden.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

**HISTORY:**

1. New section filed 2-5-2020; operative 4-1-2020 (Register 2020, No. 6).

**3271. Responsibility of Employees.**

Every employee, regardless of his or her assignment, is responsible for the safe custody of the inmates confined in the institutions of the department.

Comment: Former DP-4202, responsibility of employees.

**3272. Custody Classification.**

The classification committee at each institution must assign a custodial classification to each inmate, in accordance with the custodial classifications prescribed by the department. The senior custodial officer on duty may temporarily increase the custodial classification of an inmate at any time he or she believes such action is necessary to protect the security and good order of the institution. Such action is subject to classification committee review at the next regular meeting. Any reduction of an inmate's custody classification must be by classification committee action.

Comment: Former DP-4203, custody classification.

**3273. Acceptance and Surrender of Custody.**

Wardens and superintendents must not accept or surrender custody of any prisoner under any circumstances, except by valid court order or other due process of law.

Comment: Former DP-4204, acceptance and surrender of custody.

**3274. Inmate Count and Movement.**

(a) Inmate count. Every institution head shall maintain a system to account at all times for inmates under their jurisdiction. A physical count of all inmates shall be taken at least four times during each calendar day unless otherwise authorized in writing by the director. No inmate activity shall be scheduled at a time which would disrupt a facility count.

(1) Standing count. At least one daily count shall be a standing count wherein inmates shall stand at their cell door or, in a dormitory, shall sit on their assigned bed during the designated count time.

(2) Emergency count. If staff determines an inmate may be missing, an emergency count shall be conducted to determine whether an escape has occurred and, if so, the identity of the escapee. When an emergency count is announced, inmates shall return to their assigned housing, except in a medical emergency or other exception specifically authorized by the official in charge.

(b) Inmate movement. Each facility shall establish a schedule of routine inmate movement to and from the facility's activities and assignments such as work and education, and the gym or exercise yard.

(1) Appointments. A CDC Form 129 (Rev. 7/88), Inmate Pass, shall be issued to an inmate approved for movement to a scheduled non-routine appointment. Medical service and case work appointments shall not be scheduled during an inmate's work or program hours unless an inmate cannot otherwise obtain the service or case work.

(2) Unscheduled movement. If unscheduled movement of an inmate is necessary, such movement shall not take place unless the

Exhibit #3  
F**3286. Controlling and Reporting Fights.**

When inmates fight, the participants must be separated at once. The participants will be placed in detention, unless in the judgment of a superior officer circumstances do not warrant such action. Employees who observe the fight will prepare a written report stating clearly everything they observed, and will submit this report to the disciplinary officer. The employee who renders the report should, if possible, state who was the aggressor. The report will include the time, place, names of participants, name(s) of aggressor(s), the reason for the fight if it can be ascertained, weapons used if any, names of witnesses, action taken if any, and recommendations to prevent further recurrences.

Comment: Former DP-4217, controlling and reporting fights.

**3287. Cell, Property and Body Inspections.**

(a) Insofar as possible, a cell, room, or dormitory bed area and locker will be thoroughly inspected immediately upon its vacancy and again, if there is a significant time lapse, before another inmate is assigned to the same cell, room or dormitory bed and locker. Such inspections are required and must be recorded for segregation, isolation and security housing unit cells. The purpose of such inspections is to fix responsibility or the absence of responsibility for security and safety hazards and serious contraband found in the cell, room or dormitory area.

(1) Occupied cells, rooms and dormitory areas, including fixtures and lockers, and any personal and state-issued property of the occupant will be inspected on an infrequent and unscheduled basis. More frequent inspections will be conducted in specialized housing units, depending upon the security requirements of the unit and the risk an individual inmate presents to that security.

(2) Cell and property inspections are necessary in order to detect and control serious contraband and to maintain institution security. Such inspections will not be used as a punitive measure nor to harass an inmate. Every reasonable precaution will be taken to avoid damage to personal property and to leave the inmate's quarters and property in good order upon completion of the inspection.

(3) An inmate's presence is not required during routine inspections of living quarters and property when the inmate is not or would not otherwise be present. During special inspections or searches initiated because the inmate is suspected of having a specific item or items of contraband in his or her quarters or property, the inmate should be permitted to observe the search when it is reasonably possible and safe to do so.

(4) The inmate will be given a written notice for any item(s) of personal and authorized state-issued property removed from his or her quarters during an inspection and the disposition made of such property. The notice will also list any contraband picked up or any breach of security noted during the inspection, and the follow-up action intended by the inspecting officer.

(b) An inmate is subject to an inspection of his or her person, either clothed or unclothed, when there is a reasonable suspicion to believe the inmate may have unauthorized or dangerous items concealed on his or her person, or that he or she may have been involved in an altercation of any kind. Such inspections may also be a routine requirement for inmate movement into or out of high security risk areas. Random or spot-check inspections of inmates may also be authorized by the institution head to prevent possession and movement of unauthorized or dangerous items and substances into, out of, or within the institution. Visual daily inspections of inmates shall be made to ensure compliance with departmental grooming standards. All such inspections shall be conducted in a professional manner which avoids embarrassment or indignity to the inmate. Whenever possible, unclothed body inspections of inmates shall be conducted outside the view of others.

(1) Correctional employees, other than qualified medical staff, shall not conduct unclothed body inspections of inmates of the opposite sex except under emergency conditions with life or death consequences.

(2) Routine inspections of clothed male inmates may be performed by employees of either sex.

(3) Body inspection of clothed female inmates shall be conducted by female correctional employees only, except in emergency situations requiring the immediate search of inmates to avoid the threat of death, escape, or great bodily injury. In such emergency situations, male correctional employees may conduct clothed body inspections only until sufficient numbers of female correctional employees are available to assume critical body search duties.

(4) Male correctional employees shall not, under any circumstances, perform non-emergency body searches of female inmates.

(5) Any inspection of body cavities, other than visual or metal detector inspections, will be conducted in a medical setting under the direct supervision of a physician. Any physical intrusion into body cavities must be performed by a physician, and then only after all less obtrusive methods have failed to bring the inspection to a conclusion.

(c) Inmate Body Searches. Inmates shall submit to body inspections using contraband and metal detection devices and electronic drug detection devices, including but not limited to, ION scanners and low-dose, full-body x-ray scanners. Inmates shall also submit to inspections of all personal items, including but not limited to, wheelchairs, implants, prostheses, and assistive devices, using contraband and metal detection devices and electronic drug detection devices, including but not limited to, ION scanners.

(1) Contraband and metal detection devices and electronic drug detection devices, including but not limited to, ION scanners and low-dose, full-body x-ray scanners shall be used on inmates when they leave a visiting area, upon conclusion of a family visit, upon returning to a yard or facility from vocational or educational classes, upon entering or exiting a secure perimeter, and prior to placement into restrictive housing.

(2) The use of the low-dose, full-body x-ray scanners shall comply with Code of Federal Regulations, Title 28, Section 115.15(a) (7/1/2012), which is hereby incorporated by reference.

(3) Low-dose, full-body x-ray scanners shall adhere to the American National Standard Institute's Radiation Safety for Personnel Security Screening Systems Using X-Ray or Gamma Radiation (ANSI/HPS N43.17-2009), which is hereby incorporated by reference. Scanner settings shall be set by the manufacturer to 0.25 microsieverts per scan. The annual radiation limit shall be 250 microsieverts per inmate and each scan shall have a radiation dose of 0.25 microsieverts. A low-dose, full-body x-ray scanner shall identify the inmate by CDCR number and determine the annual radiation to which the inmate has been previously exposed as a result of low-dose, full-body x-ray scanning relative to the annual radiation limit before a scan is initiated.

(4) If the inmate has reached the annual radiation limit pursuant to subsection 3287(c)(3), the machine shall not perform a scan. A scan shall only be conducted when the radiation to which the inmate has been previously exposed as a result of scanning is determined to be under the annual radiation limit, and at least 0.25 microsieverts remain before the inmate reaches their annual radiation limit.

# EXHIBIT “G”

(Pages 8)

## DECLARATION OF EARL CHILDS

1, Earl Childs, declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. My California Department of Corrections and Rehabilitation ("CDCR") number is F14068. I am currently housed at California Health Care Facility on B Facility in Unit 305A. I am 38 years old.

3. I am an *Armstrong* class member. I am designated as DNM. I use a cane to help me get around and wear a mobility impaired vest to let staff know that I cannot get down on the ground. I also have a special cuffing chrono that prohibits staff from cuffing me behind my back. While I am not officially designated as having a vision impairment, I also have vision issues. I recently had a corneal transplant performed on my right eye, and currently wear special safety glasses to protect my eyes and help me regain my vision.

4. I am a *Coleman* class member. I am at the ICF level of care in the Psychiatric Inpatient Program ("PIP") at CHCF. Psychiatric Inpatient Programs are licensed psychiatric hospitals that provide intensive mental health treatment to individuals who struggle to function in an outpatient program or a shorter-term inpatient program. Before being admitted to the PIP at CHCF, I was housed in the ICF program at SVSP. Before that, I was at the Enhanced Outpatient Program ("EOP") level of care at Kern Valley State Prison.

5. I was housed at SVSP from January 28, 2021 until July 9, 2021.

6. During my time at SVSP, I was housed in C Facility, Building 5 and the TC-2 Building, which are both PIP units.

7. Staff abused and neglected me at SVSP.

8. On the morning of February 25, 2021, staff moved me from C-5 to TC-2, another PIP unit at SVSP. In the days leading up to this, I had been feeling suicidal and experiencing racing thoughts. I had also been biting my arm, which is something I sometimes do as a coping mechanism. When I was moved to TC-2, I felt even more

1 suicidal and stressed because I wasn't being given any program or groups due to COVID-

2 19. There was no mental health programming, dayroom, or yard being offered in TC-2 at  
3 the time, and I was stuck inside my cell all day on the 25<sup>th</sup>.

4 9. On the morning of February 26, 2021, I was in my cell in TC-2 and was  
5 biting my arm again. My arm began to bleed and feel very painful. I told Officer Cruz  
6 and some other officers in TC-2 whose names I did not yet know that I was hurting myself  
7 and felt suicidal. I showed them the cuts on my arm. Officer Cruz said, "Don't complain,  
8 prison is prison." Feeling frustrated and upset, I asked Officer Cruz, "What do I have to  
9 do, set myself on fire?" Officer Cruz told me, "Do it." He then walked away from my cell  
10 to my neighbor's cell.

11 10. I realized as Officer Cruz walked away that I was not going to get the help I  
12 needed. Around 12:00 p.m., just after this conversation with Officer Cruz, I set a small  
13 fire in my cell. Right after setting my cell on fire, a nurse on the unit hit her alarm. I put  
14 the fire out with water immediately after the nurse hit her alarm, and sat down in my cell.  
15 After I had put the fire out, a group of officers responded to the alarm. The officers that  
16 responded were Officer Wynn, Officer Aragon, Officer Cruz, and Officer Gasca, and two  
17 or three other officers whose names I do not know. Instead of asking me to come out of  
18 the cell, the group of officers entered my cell. They pushed me against the wall of my  
19 cell to search me, and placed me in handcuffs roughly, tugging the handcuffs hard around  
20 my wrists. As the officers were handcuffing me, one of the officers, I do not recall which  
21 one, said "Stop doing that, this is our unit." After they were done with the search, the  
22 officers took the handcuffs off my wrists. I sat on my bunk and put my music on to try to  
23 stay calm. After a few minutes, the officers exited my cell and shut the cell door.

24 11. I received a Rules Violation Report ("RVR") for arson. The RVR states that  
25 I set toilet paper on fire in my cell and put the fire out with water after staff hit their alarm.  
26 The incident reports state that I voluntarily put out the fire and submitted to handcuffs  
27 when officers came to my cell, which is accurate, but does not capture what happened fully  
28 because it does not mention my being suicidal at the time of the incident.

1 12. SVSP staff eventually reduced my RVR for arson to a counseling chrono.

2 ~~While I am thankful that staff did not charge me for something that I did during a mental~~  
 3 health crisis, if the officers had responded to my earlier requests for help, I would never  
 4 have done what I did. I felt helpless and degraded when the officers ignored my requests  
 5 for help and then roughed me up during the search afterwards. This experience made me  
 6 more hesitant to request help from officers when I am in a mental health crisis, though I  
 7 and others on my unit often needed help from them because we all have serious mental  
 8 health needs.

9 13. ~~I have also witnessed staff assault and neglect other patients in the PIP.~~

10 14. On March 5, 2021, I witnessed staff in TC-2 assault Henry Saxton, T25936.  
 11 That day, Mr. Saxton was in his cell, cell 12, which was across the hall from my cell at the  
 12 time, cell 7. I overheard Mr. Saxton telling staff that he was suicidal and asking for his  
 13 medications. The officers who responded did not seem to do anything about it. Mr.  
 14 Saxton boarded up his windows, meaning that he covered the windows so that officers  
 15 could not see into his cell, in an effort to get staff's attention. He still did not get any  
 16 attention, so he then un-boarded his windows. Eventually, nursing staff came and gave  
 17 him the medications he was requesting. When the nursing staff gave him his medications  
 18 through the tray slot, Mr. Saxton stuck his arm out of the tray slot in the door and left it  
 19 there. He asked to see mental health staff. Correctional Officers who were on the unit at  
 20 the time did not respond to his requests. They repeatedly asked Mr. Saxton to take his arm  
 21 out of the tray slot. Mental health staff still did not come. Mr. Saxton continued to refuse  
 22 to put his hand back into his cell.

23 15. After a few more minutes of Mr. Saxton trying to speak with staff about his  
 24 suicidality, an officer who I believe is named Garcia kicked Mr. Saxton's tray slot closed  
 25 and the tray slot slammed on Mr. Saxton's hand. Mr. Saxton continued to hold his hand  
 26 out and Officer Garcia kicked his the tray slot again. After a few times, Mr. Saxton pulled  
 27 his hand back into the cell. Officer Garcia then closed and locked the tray slot. Mr.  
 28 Saxton started cutting his forearm and wrist right after the officers left. I could not see

1 what he was using to cut himself, but I could see blood on the floor of his cell. About ten  
2 ~~or fifteen minutes later, medical staff came to Mr. Saxton's cell and examined him at cell~~  
3 front.

4 16. The next day, I was called out of my cell for a videotaped use of force  
5 interview, as a witness to this incident. Mr. Saxton told me that he also was interviewed  
6 on camera regarding the use of force.

7 17. On April 5, 2021, I witnessed Officer Cruz assault another patient in the PIP,  
8 Nicholas Swanson, in front of Officer Gasca and Officer Wynn. Mr. Swanson was in his  
9 cell, cell 8 in TC-2 B Section, speaking through his door to Officers Gasca and Wynn. I  
10 heard Mr. Swanson asking the officers to speak with a sergeant about Officer Cruz  
11 verbally harassing him and other patients on the unit. As Mr. Swanson was speaking with  
12 Officer Gasca and Officer Wynn, he was sticking his arm out of the food port. He was  
13 doing this to get staff to pay attention to his requests for a sergeant. Though he was  
14 holding the food port, Mr. Swanson was not being threatening in any way. Neither Officer  
15 Gasca nor Officer Wynn seemed upset with Mr. Swanson either. They were talking to him  
16 calmly.

17 18. As they were all talking, Officer Cruz walked over to Mr. Swanson's cell.  
18 Mr. Swanson could not see him coming because Officer Cruz came from the front of the  
19 tier, which is not visible from Mr. Swanson's cell, as Mr. Swanson's cell faces away from  
20 the hallway leading from the front of the tier. Officer Cruz out of nowhere kicked the tray  
21 slot and it slammed onto Mr. Swanson's arm. Mr. Swanson kept his arm outside the food  
22 port. Officer Cruz and Mr. Swanson started talking about whether Mr. Swanson could  
23 speak with the sergeant. Officer Cruz seemed to get angry and his voice got louder. Mr.  
24 Swanson told Officer Cruz to "calm down," which seemed to make Officer Cruz even  
25 angrier. Officer Cruz suddenly slammed the food port tray slot of Mr. Swanson's cell  
26 again against Mr. Swanson's arm, which was still hanging through the food port. Mr.  
27 Swanson then tried to pull his arm back into his cell, but Officer Cruz continued to slam  
28 the tray slot on his arm and Mr. Swanson could not seem to remove his arm. Officer Cruz

1 slammed the food port down on Mr. Swanson several times. Officer Gasca and Officer  
 2 Wynn stood right by Mr. Swanson's cell and did nothing to stop Officer Cruz. As Officer  
 3 Cruz was slamming the tray slot on Mr. Swanson, I overheard Officer Cruz tell Mr.  
 4 Swanson he was "done."

5 19. As this was happening, I was standing looking through my cell window.  
 6 Officer Gasca stepped in front of my door and told me "get off your door," which I  
 7 understood to mean that he wanted me to stop looking at what was happening. I told him I  
 8 didn't have to do that, as I was in my cell. Though he did step in front of the door with his  
 9 back facing me, Officer Gasca could not block my whole view, so I was still able to see.

10 After the incident was over, I told Officers Gasca and Wynn that I had seen everything.

11 20. After the assault, I saw that Mr. Swanson's arm was swollen and purple with  
 12 bruises. Mr. Swanson told me staff did not issue him an RVR for anything related to the  
 13 incident, and medical staff documented his injuries on a 7219 form. He also told me that  
 14 he filed a 602 reporting the incident.

15 21. After the incident, both Mr. Swanson and I were pulled out for video  
 16 interviews about Officer Cruz attacking Mr. Swanson. My interview lasted about five  
 17 minutes, and I told the officers everything that I saw.

18 22. After I was a witness and reported that these officers had abused other  
 19 incarcerated people, another incarcerated person attacked me at the direction of staff.

20 23. On May 25, 2021, I was out at the TC-2 yard around 11:30 a.m. and was  
 21 removing my sunglasses from my eyes. As I was taking my sunglasses off, I saw another  
 22 incarcerated person I'd never seen before standing several yards away from me. He then  
 23 walked over to me and wound up his arm to hit me. As he started swinging at me, he said,  
 24 "This is for the C/Os." He then punched me two times in the face. After he hit me, I tried  
 25 to grab his arms and restrain him from hitting me again. My goal was to stop him from  
 26 harming me without fighting back and giving officers a reason to charge me with an RVR,  
 27 when I was the one being attacked. As I was restraining him, I called for the officers on  
 28 the yard to assist me. The officers did nothing to assist. No one hit their alarm. I

1 eventually was able to restrain this person from hitting me more by locking his arms in  
2 mine. Once I had him restrained, I asked him why he was doing this. He said, "I was paid  
3 to get you." I asked him who paid him, and he said Gasca. Officer Gasca is one of the  
4 officers who responded to the fire in my cell in TC-2. Shortly after I restrained the other  
5 incarcerated person, Officer Gasca, who was on the yard at the time, threw a pepper spray  
6 grenade at us to try to break up the fight, even though we had already stopped fighting.

7 24. A group of officers, including Officer Gasca, responded to the scene. As  
8 previously mentioned, I use a cane to help me get around. Because I was on the yard at the  
9 time, I had my cane with me and was wearing my mobility impaired disability vest. My  
10 cane was sitting on the table where I had placed it when I was taking my glasses off,  
11 before I was attacked. After the grenade was thrown, Officer Gasca ordered me get down  
12 on the ground. I told him I could not get down on the ground because of my mobility  
13 issues, and pointed to my cane that was sitting nearby. He walked over to me and tried to  
14 handcuff me behind my back. I told him that I needed to be handcuffed in front, because  
15 of my special cuffing chrono. Officer Gasca said, "I don't care" and cuffed me behind my  
16 back. I asked to grab my cane. Officer Gasca refused my request. With my hands behind  
17 my back and no cane, I felt like I might fall as I walked.

18 25. The officers walked me and the other incarcerated person who had attacked  
19 me to a medical room in TC-2 and placed us in separate holding cages in the same room.  
20 Nursing staff came to evaluate me and the incarcerated person who attacked me, and  
21 document our injuries on a 7219 form. My left eye was black and I had abrasions on my  
22 knees and forearms. During the evaluation, the nurses asked us each why this altercation  
23 happened. The other incarcerated person was sitting several feet away from me, and I  
24 overheard him say, "Nobody else wanted to step up to the plate and get paid."

25 26. After seeing the nurse, staff took me back to my cell. About twenty minutes  
26 later, Officer Gasca walked up to my cell door. He asked me, "What was all this over? Do  
27 you know the guy? He's big, you handled your business." I told him "you know what's  
28 going on." Officer Gasca chuckled and said "No, that's a big guy though." He turned and

1 walked away from my cell. From his tone, the way he chuckled, and his repetition of the  
 2 fact that my attacker was "big," it seemed to me he knew exactly what had happened, and  
 3 was taunting me.

4 27. That evening and into the next day, I was very agitated and upset that Officer  
 5 Gasca had paid someone to attack me. On the morning of May 26, I asked the floor staff  
 6 to call my clinician to come speak with me. Ms. Kim, my psychologist, came to see me at  
 7 my cell. I told her what had happened and that I was feeling suicidal and also having  
 8 thoughts of harming Officer Gasca for what he did to me. She talked with me briefly, but  
 9 quickly left without really helping me. I stayed in my cell.

10 28. I submitted a 602 about this incident the same day that it happened. The next  
 11 day, a captain whose name I do not know and doctor whose name I did not know came to  
 12 speak with me about the incident. I did an interview about the incident on camera. After  
 13 explaining what happened, they told me they would try to reduce the RVR because I was  
 14 attacked and was not trying to fight this other person.

15 29. Despite that conversation, I was charged with an RVR for fighting. The  
 16 RVR states that the other person involved was hitting me, and then I placed him in a  
 17 chokehold and brought him to seated position, as he continued to hit me. The RVR states  
 18 that Officer Gasca then fired an OC grenade at the two of us, handcuffed me, searched me,  
 19 and led me to medical then back to my cell. The RVR correctly suggests that the other  
 20 person was the attacker and I was simply trying to stop him through restraining him. A  
 21 few months later, at my 115 hearing, the Lieutenant dropped the RVR.

22 30. Officers denying me and other patients the care that we need made me feel  
 23 extremely unsafe living in the PIP at SVSP. I still had to interact with the officers that  
 24 were involved in the staff misconduct against me frequently until I transferred to CHCF.

25 31. In my opinion, staff target people with severe mental illness with staff  
 26 misconduct. From my observation, many patients in the PIP program do not have the  
 27 ability to advocate for themselves because they are dealing with their mental illness. It  
 28 seems to me that staff take advantage of this. In units where there are not as many people

1 with mental illness, it is my experience that staff misconduct happens less because staff  
2 know that they will be reported by people who are doing better with their mental health.

3

4 I declare under penalty of perjury under the laws of the United States of America  
5 that the foregoing is true and correct, and that this declaration is executed at Stockton,  
6 California this 28 day of Sept, 2021.

7  
8 s/ Earl Childs 12/25/82  
9 Earl Childs

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# EXHIBIT “H”

Pages <sup>+</sup>2

STATE OF CALIFORNIA  
HEALTH CARE GRIEVANCE  
CDCR 602 HC (Rev. 10/18)

## Exhibit (H)

p91

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Page 1 of 2

STAFF USE ONLY	Expedited? <input type="checkbox"/> Yes <input type="checkbox"/> No	Tracking #:
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Staff Name and Title (Print)	Signature	Date
If you think you have a medical, mental health or dental emergency, notify staff immediately. If additional space is needed, use Section A of the CDCR 602 HC A Health Care Grievance Attachment. Only one CDCR 602 HC A will be accepted. You must submit this health care grievance to the Health Care Grievance Office for processing. Refer to California Code of Regulations (CCR), Title 15, Chapter 2, Subchapter 2, Article 5 for further guidance with the health care grievance process.		

Do not exceed more than one row of text per line. WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

Name (Last, First, MI):	CDCR #:	Unit/Cell #:
Vaughn Edwards	BA3724	B-12

SECTION A: Explain the applied health care policy, decision, action, condition, or omission that has had a material adverse effect upon your health or welfare for which you seek administrative remedy: *Today There was a fight on the Yard and I was Asked to witness For Inmate Childs.E. To The Incidents that took place on the Yard and don't want to have problems on the unit(s). By doing that with Brown nor Childs. On May 24, 2021. Inmate Brown walked up to Inmate Childs and said lets get it and Started to Swing on Inmate Childs.E. By the two tables that Face the Street on the Yard. Inmate Childs.E. Fought Back and gained the upper hand after swinging Back and wrestled Brown to the ground and placed him in the head lock and called for the Correctional Officers. To Assist him with Brown due to the attack. The Correctional Officers Said Proned out and threw a Granade on the two of them, Inmate Childs.E. Lets go at that point and lays down the two were handcuffed and J.SFRVN. made everyone move over to the Basketball Court as the two were escorted out the area.*

Supporting Documents Attached. Refer to CCR 3999.227  Yes  No *Class Action 602 for Group Appeals.*

Grievant Signature: *Vaughn Edwards* Date Submitted: *May 24, 2021*

BY PLACING MY INITIALS IN THIS BOX, I REQUEST TO RECEIVE AN INTERVIEW AT THE INSTITUTIONAL LEVEL.

SECTION B: HEALTH CARE GRIEVANCE REVIEW INSTITUTIONAL LEVEL: Staff Use Only	Is a CDCR 602 HC A attached? <input type="checkbox"/> Yes <input type="checkbox"/> No
This grievance has been:	
<input type="checkbox"/> Rejected (See attached letter for instruction):	Date: _____ Date: _____
<input type="checkbox"/> Withdrawn (see section E)	
<input type="checkbox"/> Accepted	Assigned To: _____ Title: _____ Date Assigned: _____ Date Due: _____
Interview Conducted?	<input type="checkbox"/> Yes <input type="checkbox"/> No Date of Interview: _____ Interview Location: _____ Date: _____
Interviewer Name and Title (print):	Signature: _____ Date: _____
Reviewing Authority Name and Title (print):	Signature: _____ Date: _____
Disposition: See attached letter	<input type="checkbox"/> Intervention <input type="checkbox"/> No Intervention
HCGO Use Only: Date closed and mailed/delivered to grievant:	

1. Disability Code:	2. Accommodation:	3. Effective Communication:
<input type="checkbox"/> TABE score s 4.0	<input type="checkbox"/> Additional time	<input type="checkbox"/> Patient asked questions
<input type="checkbox"/> DPH <input type="checkbox"/> DPV <input type="checkbox"/> LD	<input type="checkbox"/> Equipment <input type="checkbox"/> SLI	<input type="checkbox"/> Patient summed information
<input type="checkbox"/> DPS <input type="checkbox"/> DNH	<input type="checkbox"/> Louder <input type="checkbox"/> Slower	Please check one:
<input type="checkbox"/> DDP	<input type="checkbox"/> Basic <input type="checkbox"/> Transcribe	<input type="checkbox"/> Not reached <input type="checkbox"/> Reached
<input type="checkbox"/> Not Applicable	<input type="checkbox"/> Other	*See chrono/notes

4. Comments:

STAFF USE ONLY